

THEORETICAL AND PRACTICAL CONSIDERATIONS RELATING TO THE OFFENSE OF DRIVING A VEHICLE UNDER THE INFLUENCE OF ALCOHOL OR OTHER SUBSTANCES. COMPARATIVE LAW ISSUES

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Abstract

Along with the enforcement of the New Criminal Code, the offense provided by art. 87 from the Emergency Ordinance no. 195/2002 was abolished and introduced in the New Criminal Code in art. 336 under the name "Driving a vehicle under the influence of alcohol or other substances". The introduction of this offense in the Criminal Code was made as a result of some modifications regarding the offense objective content and sanctioning character. The most important modifications consist in the incrimination conditions in respect to the moment alcohol must be identified in the blood so that the material element of the objective side of the offense is met. This modification further led to a series of problems, mainly regarding the moment the offense is consumed, moment that in the legislator's opinion is the moment the biological samples are taken. This opinion does not consist with the fact that this offense is a danger offense and it is consumed at the moment it occurred. According to the Romanian Constitutional Court decision no. 734/2014, after the moment the offender is stopped in traffic, he no longer represents a danger to the values protected by the criminal law and it would be absurd to punish him for an action that no longer represents a danger to society, considering the moment the biological samples are taken. Moreover, this legal issue lead to acquittal solutions regarding the offense provided and sanctioned by art. 336 from the Criminal Code.

Keywords: *offense, biological samples, driving, vehicle, alcohol.*

1. Introduction

"A society cannot exist, as a whole, without a series of fundamental values defended by legal rules. One aspect of a developing social life has been represented since ancient times by the social values protected by the legislation that the completely social life depends on. "After the emergence of the state, the function of defending of the essential social values that the society is based and develops is realized by means of criminal law."¹

By applying sanctions for committing some dangerous actions or considered by the society as being dangerous, it is found the importance of criminal law in everyday life and its indispensability, in general, of the offenses in the road that the society frequently deals with lately, and the number of the convicted people in this respect is in continuous growth.

It is very important that the regulatory acts should adapt themselves to the society and, especially, to the level of values the society is built and formed, thus, the law is in a constant change, trying to fold close to the perfection on the needs of the community. Of course, the balance between the social realities and the normative field that establishes the relations between individuals is not always perfectly accomplished, thus, the interpretation of the rules in the spirit they were

created for, suggests the fair application of these ones and, without doubt, the law finds applicability in the national culture and morality. It is admitted the fact that the society is continuously changing and it is therefore imperative that the rules should become acquainted with the occurred social changes.

With the occurrence of the new Criminal Code Penal², the Romanian law system has undergone a reform as regards the criminal legislation. This reform was welcomed in most cases by the great authors and theorists, however, as any new issue; it was the subject of some criticism, which, in some cases, surpassed the beneficial side of the new legislation.

As a novelty, a number of offenses of the special legislation were introduced in the new Criminal Law. Thus, offenses, such as those in the field of Government Emergency Ordinance no. 195/2002 regarding the circulation on the public roads, were abolished and introduced in the Criminal Code under the influence of some regulatory changes, which later led to a number of legal issues that required even the intervention of the High Court of Cassation and Justice or of the Romanian Constitutional Court in order to solve some legal problems or to establish the unconstitutionality of the acts.

Art. 87 of the Government Emergency Ordinance no. 195/2002 was abolished by art. 121 section 1 of Law no. 187/2012 for the

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¹ Constantin Mitrache, Cristian Mitrache, *Roman Criminal Law. General Part*, Ed. Universul Juridic, Bucharest, 2014, p.21.

² Law no. 286/2009 regarding the (new) Criminal Law, published in Official Gazette. No. 510 of 24th July 2009.

implementation of the Law no. 286/ 2009 regarding the Criminal Code.

The present study focuses on the analysis of the stipulations of the incriminating text of the art. 336 of the new Criminal Code, corresponding in G.E.O. no. 195/ 2002, art. 87. The offense is regulated in a simple variation, an assimilated variation and an aggravated variation.

2. The Analysis of the Offence

2.1. Legal Content

In a simple form, the Criminal Code defines as a criminal offence, the action of a person of driving a vehicle on public roads for which the law requires the possession of a driving license at the time of collecting the biological samples has an alcoholic impregnation of over 0, 80 g/l of pure alcohol in blood³. It is noticed that the new regulation takes over many of the constitutive elements of the offence, as it was previously regulated in the Emergency Ordinance no. 195/ 2002, but with some differences:

Driving on public roads does not concern only a vehicle or tram, but the material element of the offence reveals the condition of driving any kind of vehicle⁴ for which the law provides the obligation of possessing a driving license.

It is noticed the fact that in this situation, the legislator extended the incrimination procedure on any type of vehicle, the only condition is that the legislation provides the obligation of possessing the driving license of the driver of the vehicle in question.

It is also noticed the fact that the minimum allowed limit referring to the alcoholic impregnation in the blood is the same, i.e. 0.80 g/l of pure alcohol in the blood, but with the specification that this one is necessary to exist at the time of biological sampling.

In the assimilated form, art. 336 finds guilty the deed of the person who drives a vehicle on public roads that the law provides the obligation of possessing a driving license under the influence of some psychoactive substances. The normative text takes the same structure of the old regulation with the following differences⁵:

The action of driving must relate to a vehicle for which the law provides the obligation of owning a driving license, as in the case of the simple form.

As regards the active subject, this one must be under the influence of psychoactive substances, as opposed to the old regulation where the condition of

the active subject was that this one was under the influence of some substances or narcotic products or drugs with similar effects to these ones.

The aggravated form is provided in paragraph (3) and is represented by the deed of the person who drives a vehicle on public roads for which the law provides the obligation of possessing a driving license at the time of biological sampling and has an alcoholic impregnation exceeding 0, 80 g/l of pure alcohol in blood or the person is under the influence of some psychoactive substances, if this person carries out public transport of people, transport of substances or dangerous substances or is in the process of practical training of people in order to obtain the driving license or during the practical tests of the exam in order to obtain the driving license. It is noticed the fact that there are no changes of the constitutive elements of the offence in relation to the previous regulation.

2.2. Pre-existing conditions

The legal object is constituted by those social relations that ensure the safety on public roads.

The offence prescribed by art. 336 lacks of material object, being a crime of danger the driving of a vehicle on public roads according to the conditions prescribed in the text of incrimination being means through the offence is committed and not its object.

In the case of the simple and aggravated form the active subject is unqualified, being any person who satisfies the required conditions by the law for criminal responsibility. In interpreting the aggravated form, it is necessary that the active subject should perform a certain activity, such as: making public transport of passengers, transport of substances or dangerous products or he/ she is in the process of practical training of some people to obtain the driving license or is during the practical examination to obtain the driving license, thus, the active subject must be qualified in this situation

The passive subject is the state, "over which it passes these consequences of all violations of the rule of law, implicitly the consequences that violate the traffic rules on public roads."⁶

2.3. The Constitutive Content

In terms of the objective side, the material element of the simple and aggravated offence prescribed by art. 336 in para. (1) and (2) is carried out by the action of driving, under para. (1) by a person who has an alcoholic impregnation over 0, 80 g/l of pure alcohol in blood at the moment of biological sampling, and in the case para. (2) by a

³ Art. 336 of Criminal Code.

⁴ The mechanical system which moves on the road, with or without means of self-propulsion, currently used for the transport of people and/or goods or to perform services or works. Art. 6, pt 35 of GEO no. 195/2002.

⁵ Tudorel Toader, Maria-Ioana Michinici, Anda Crisu-Ciocinta, Mihai Dunea, Ruxandra Raducanu, Sebastian Radulet, *New Criminal Code, Comments on articles*, Ed. Hamangiu, 2014, p 528.

⁶ Alexandru Boroi, *Criminal Law. Special Part.*, Ed. Universul Juridic, Bucharest, 2014, p. 503.

person who is under the influence of some psychoactive substances.

It is mentioned that the collection of the biological samples is done in the authorized health care units or in forensic medicine institutions and carried out only in the presence of representative of the traffic police officers. The determination of the concentration of alcohol or the presence of substances or narcotic products or drugs with similar effects to these in the organism is done in authorized forensic medicine institutions in accordance with the methodological norms established by the Ministry of Public Health. Also, the traffic police officers establish the presence of the alcohol in the exhaled or preliminary test the presence of substances or narcotic products or drugs with similar effects in the organism with the aid of some certified technical means, for example: ethyl test.⁷

As regards the aggravated variation prescribed in para. (3), the material element is performed under the influence of the same actions of driving, but in specific terms and conditions:

In the first way of committing the offence, the vehicle must meet the conditions to be used as a means of transport in order to public transport of passengers;

The second way provides the transportation with a vehicle by the person in the situations prescribed in para (1) and (2) of the substances or dangerous products;

The third situation requires that the person under the incidence of the above mentioned paragraphs to be in the practical training of some people in order to obtain the driving license;

The fourth way requires that the person referred to in art. 336 may be located during the practical exam in order to obtain the driving license.

The offence is one of danger; so consequently, the immediate consequence will count in endangering the safety on public roads.

“In order to fulfil the objective side of the offences referring to the safe circulation on the public roads, there must be a causal link between the action or inaction that constitutes the material element and the specific result. The causal link comes from the very materiality of the offence and should not be proved.”⁸

In terms of the subjective side, the offence provided and punished by the art. 336 can be committed in the form of a direct or indirect attempt.

The reason or the aim of the commitment of the crime has no relevance for the existence of the offence, but they are to be considered in the individualizing of the possible punishment that will apply to the defendant.

The offense is likely to be committed as an interrupted attempt. It might commit an attempt to

the offence provided in art. 336 of the Criminal Code, the offender who was in an advanced state of drunkenness (blood alcohol level over 0.80 g/l) climbed at the wheel of a car, started the engine, geared lever I of speed to move forward, but a friend or even a police officer actually stops this person. The preparatory acts, even though possible, as the attempt, are not punished.

As regards the more favourable law to the conditions of the incrimination, having an extension of the rule of incrimination, the Criminal Code has more stringent regulations. In terms of the system of penalties, the Criminal Code has a favourable character because it provides an alternative to the simple variant and assimilated variant both imprisonment and fine penalty.

The commitment of the offence is punishable by imprisonment of between one to five years or fine in both simple and assimilated variation. As far it concerns the aggravated variant ion, the commitment of the offence is punishable by imprisonment between 2 and 7 years.

3. Decision no. 3/ 2014 of the High Court of Cassation and Justice

As shown above, the incorporation of the art. 87 of GEO no. 195/ 2002 in the content of the art. 336 of the Criminal Code was made subject to some amendments, aspects that have caused a number of differences, a non-unitary practice and even the investment of the superior courts for the purpose of solving some laws or establishing the unconstitutionality of provisions referring to the objective side of the offence, the moment of the offence and in particular on what evidence, derived from the work of sampling and analysis of the biological samples, we can discuss about the incidence and the criminal nature of the deed. So:

The High Court of Cassation and Justice published its decision in the Official Gazette no. 392 on 28th May 2014. The jury for solving some points of law in criminal matters no 3/ 2014 had as objective to pronounce a prior decision to solve a principle of the law regarding the interpretation and enforcement of the stipulations of art. 336 para. (1) of the Criminal Code for the purpose of establishing the result of the alcohol with criminal relevance in the hypothesis of a double biological samples.

The notification of the Criminal Section of the High Court of Cassation and Justice was determined by the so- called mismatch of the provisions of the art. 336 para. (1) of Criminal Code with the existing methodological norms regarding the sampling, the storage and the transportation of the biological samples to judicial probation through establishing

⁷ G.E.O. 195/2002, art. 88.

⁸ Alexandru Boroi, *Criminal Law. Special Part*, Ed. Universul Juridic, Bucharest, 2014, p. 504.

the alcohol or the presence of narcotic substances or drugs with similar effects, in the case of the people involved in events or circumstances related to road traffic, approved by the law of Ministry of health no 1512/ 2013, especially those in art. 10 para. (1).

The Court of Appeal from Alba- Iulia, the Criminal Section and for cases involving children decided to notify the High Court of Cassation and Justice regarding the pronouncement of a prior decision to solve the principle of the law regarding the enforcement and interpretation of art. 336 para. (1) of the Criminal Code, for the purpose of establishing the blood alcohol result with criminal relevance in the hypothesis of a double biological sample.

Since the legislator did not take over the entire incriminating text of art. 87 of G.E.O no. 195/ 2002, in the practice of the courts was raised the problem of the moment of the alcohol level with criminal relevance for the reintegration of the objective side of the offence. It is reminded that the old regulation implied an alcoholic impregnation that exceeded 0, 80 g/l of pure alcohol in blood at the time of driving the vehicle, thus, enabling to establish this deed through retroactive calculation⁹ that was possible due to the methodological rules regarding the sampling, the storage and the transport of the biological samples in order to judicial probation through the establishment of the alcohol or the presence in the organism of substances or narcotic products or drugs with similar effects to these ones in the case of the involved people in the events or circumstances referring to the road traffic¹⁰.

3.1. The opinion of the instances in Romania

Most Courts of Appeal in Romania have submitted opinions regarding the law issue undergone to solve, at the request of the High Court to solve the law issue undergone to the analysis, and for this purpose, the interpretation has been one common, as follows : in the case of a double biological taken samples, the one with criminal relevance and that completes the objective side of the offence is the first sampling as this is the time closest to the time of detection in the traffic of the driver under the influence of the alcohol or other substances¹¹.

At the level of the Courts in from the District 1, 4 and 5 Bucharest, it has formed the opinion that: “determining the criminal activity depending on the result of the first sampling corresponds most to the social protected values . Thus, if the result of the first sampling is higher than of the second, then the alcoholic impregnation from the time of the commitment was higher than the existing at the time

of the two samples, fact that proves the degree of superior social danger”.

The Court in District 2 expressed the point of view in terms of criminal relevance of the evidence with the highest value.

On the basis of the principle in dubio pro reo, the Law Court of District 6 expressed the opinion according to which the level of the blood alcohol with criminal relevance should be given by the lowest value because not the first taken sample is lower, since the blood alcohol content takes the form of a curved with an increasing and decreasing period. If the sampling of the two blood proofs is done during the increasing period, the first sample has a lower value and will be more favourable to the defendant. If the sampling of the two samples is carried out during the decreasing period, the second sample will be lower and more favourable to the defendant.

3.2. The opinion of “Mina Minovici” Forensic medicine Institute

There is also an official point of view of the National Forensic Medicine Institute “Mina Minovici” that replied that the criminal relevance of the ethylic intoxication is given by the value of the alcohol from the first blood taken, arguing that:

“Collecting two blood samples was part of the methodology to determine the ethylic intoxication and was useful for establishing the phase of the intoxication (absorption or elimination) and the rate of the individual elimination in case of the request the expertise of the retroactive assessment of alcohol. For the purposes of the new Criminal Code, the extraction of a single blood sample in a moment as close as possible to the road event is necessary.

This provision should have replaced the old provision of collecting two blood samples provided in the Order of the Health Minister no 1.512/ 2013, but pending the modification of the order of health minister, the National Institute of Forensic Medicine “Mina Minovici” stated that the value of the alcohol from the first blood sample gives the probative value for the existence of the alcoholic intoxication.

The alcohol consumed by a person enters a dynamic process in the body called metabolism. The concentration of the alcohol in various parts of the body will be different from one moment to another, until the completely elimination from the body. Complex mechanisms governed by dozens of individual, general and particular factors interfere in the metabolism of the alcohol. Thus, each person reacts in his or her own way, both in terms of method or metabolism, as well as, especially, as regards the clinical manifestations rendered by behaviour.

⁹ Art. 10. (1) To determine the blood alcohol content, two blood samples will be taken at an interval of one hour each other, each sample being represented by an amount of 10 ml blood.

¹⁰ Approved by the Order of the Health Minister no. 1.512/2013.

¹¹ Decision of High Court of Cassation and Justice no. 3/2014.

Although the pathophysiological mechanisms are very well known, it has not been found so far any acceptable model based on which it could be faithfully reconstructed the path of the alcohol in the dynamics of the process of absorption and elimination from the body. In this respect, it has been developed multiple models of the evolution of the blood concentration in the body, the closest to the reality being the one imagined by Widmark.

It has been shown that the only scientific way to establish the level of the alcoholic intoxication is through the blood analysis of the taken sample, and the probative value of the expertise regarding the retroactive estimation of the alcohol has been greatly exaggerated, the retroactive interpretation of the alcohol is not a usual expertise in the European countries and is rarely allowed.

Since it is impossible to quantify all the factors that contribute to the metabolism, it applies models of calculation of graphical expression that are simplified, estimated or resulted from the statistical averages. In the submitted opinion, this represents a first argument for the relative character of a retroactive interpretation of alcohol.

The speculative nature of this kind of expertise provides the main argument. To reproduce the metabolism of a certain amount of drink, this one must be objectively known, as well as all the circumstances of the respective alcohol consumption. The defendant provides all the information in all these cases. It is necessary to know that at a certain level of blood alcohol, established undoubtedly through the laboratory analysis, it can be reached through an infinite number of variations of consumption. By default, there will be an infinite number of possible concentrations in a previous moment. Therefore, through this type of expertise, it is concluded that if the person had swallowed the alcoholic beverages declared, he/she would have had certain blood alcohol content in the accused moment. The recalculated blood alcohol content does not reflect the real value, but only one theoretically possible, resulted only from the declared consumption.

The veracity of the declaration of consumption cannot be scientifically verified, as there are not certain criteria in this regard. The data from the declaration of consumptions are subjective and can be more or less real, regardless the good faith of the offender, especially due to the fact that they are mentioned after a long period of time (months or even years), and in most cases the declarations are incomplete, unreal, improbable or sometimes really absurd.

Citing the experience of decades, the National Institute of Forensic Medicine "Mina Minovici" specifies that, in almost all the cases in which the

results were below the limit of offence through recalculation, the declarations of consumptions reports were not real, but there were no scientific arguments to specify this thing. However, these cases are not isolated, representing between 1/2 to 1/3 of the total of these expertise in recent years."¹²

In order to sustain those mentioned, the National Institute of Forensic Medicine "Mina Minovici" presented a statistics of this type of expertise to understand the extent of the phenomenon: "There were performed 3722 of expertise for the calculation and retroactive interpretation of the blood alcohol content in 2013, and it has to be noticed the progressive decrease in the number of the requests to perform this type of expertise in the last 4 years. Of the 3.722 of expertise, in 68 % of cases, it has been calculated the blood alcohol content could have been higher than 0,8 g/l at the moment of driving."¹³

Thus, we notice that the National Institute of Forensic Medicine "Mina Minovici" presents a series of arguments that are out of the scope of the criminal law in the way that it presents the situation of the blood alcohol content from the biological and metabolic point of view, perspectives which are in a close connection with the completion of the objective side of the offence that is the subject of the analysis, sustaining and reinforcing the opinion according to which the relevant value of the blood alcohol content is given by the first biological sample taken by the medical staff.

3.3. The Opinion of the Department of legislation, studies, documentaries and legal information within the High Court of Cassation and Justice

In order to form the unitary point of view on the matter of law, it has been requested the opinion of the Department of legislation, studies, documentaries and legal information within the High Court of Cassation and Justice that also presented the situation according to which the moment of the first sample of the biological samples is relevant for the retention of the offence of "driving a vehicle under the influence of alcohol or other substances."

The department of the legislation, studies, documentaries and legal information within the High Court of Cassation and Justice argued that: "Introducing the condition that the person should have an alcoholic impregnation of over 0,80 g/l of pure alcohol in blood at the time of collecting the biological samples", the legislator of the new Criminal Code aimed at excluding the possibility of a later recalculation of the alcohol impregnation in blood as the memorandum of reasons reveals, and not the exclusion of the connection between the action of driving on public roads of a vehicle and the

¹² Decision of High Court of Cassation and Justice no. 3/2014.

¹³ Idem.

moment when the existence of the alcohol impregnation in blood of over 0, 80 g/l is found. In order to eliminate the inconveniences created by the recalculation of the alcohol impregnation in blood, the legislator opted for the moment of sampling the biological samples, as a close moment when it can determine the alcohol impregnation with a high degree of accuracy and which are relevant, at the same time, for the action of driving on public roads of a vehicle and for the safety on public roads.

Therefore, the time of collecting the biological samples constitutes a single moment located in the immediate vicinity of a driving action of a vehicle on public roads that is relevant for the safe circulation on public roads and allows the determination of the alcohol impregnation in blood with a high degree of accuracy.

This is what results from the provisions of art. 190 para (8) of the new Criminal Code procedure that uses the phrase "in the shortest time" referring to the collection of biological samples in the case of the offense provided in art. 336 para. (1).

Thus, the regulation contained in art. 336 para. (1) of the Criminal Code, excluding the further recalculation of the alcohol impregnation in blood and setting a unique moment of collecting the biological samples, immediately, subsequent to the driving action on public roads, estimates that the moment of the second sampling cannot be considered as a moment with relevance to the safe circulation on public roads.¹⁴

3.4. The relevant judicial practice

The decision no. 3/ 2014 of the High Court of Cassation and Justice has taken into account a number of aspects relating to the judicial practice of courts in criminal matters, such as: the criminal Sentence no. 565/ 5th . 03. 2014 of Court from Miercurea- Ciuc; the criminal Sentence no. 674 of 27th. 02. 2014 of the Court from Arad and the criminal decision no. 230/ A of 20th .03. 2014 of the Court of Appeal from Cluj.

Thus, by the penal sentence no. 565/ 5th .03. 2014 of the Court from Miercurea- Ciuc that noticed the fact that there were two samples of biological samples, in this case, from the defendant sent to court for the commitment of the offence prescribed by art. 87 para. (1) of the Government Emergency Ordinance no. 195/ 2002 (according to the report of toxicological alcohol analysis no. 118/ 47/ A-12 issued by the County Service of Forensic Medicine in Harghita on 20th.03.2013 , the defendant presented a blood alcohol content of 0,85% at 20:45, and at 21:45 presented a blood alcohol content of 0,65 %) , it has been established that the result of blood alcohol content of criminal law, in the event of a double sampling, is the second sampling, disposing

on the basis of art. 396 para (5) in relation to art 16 para (1) (b) of the Code of Criminal procedure, the defendant's acquittal of for committing the offence under art. 336 para (1) of the Criminal Code.

The solution of the court took into account the fact that art. 336 para (1) of the Criminal Code has not been drawn up in terms that are sufficiently clear conclude, beyond any doubt, that the deed of the defendant may be punished from the point of view of criminal law, being doubtful the obligation of the concrete framing in which the defendant acted in the text of art. 336 para (1) of Criminal Code, especially since the European Court of Human Rights decided that, in the criminal matters, the analogy to the detriment of the defendant is prohibited, so the terminology used in the drafting of art. 336 para (1) is ambiguous, inaccurate and is likely to deprive the predictability this rule of incrimination.

Noting that the Health Minister Order no. 1.512/ 2013 takes further effects, reported to the constitutional principle of retroactivity of the more favourable criminal law, the court considered that the provisions of the new Criminal Code which accuse the deed of the defendant of driving a vehicle under the influence of the alcohol must be interpreted as being, by reference to the second sample, a more favourable criminal law from the mandatory retroactive effect of which the defendant cannot be excluded.¹⁵

As regards the motivation of the court and the interpretation of law institutions that are closely related to the commitment of the offence prescribed and punished by art. 336 of Criminal Code, we specify that the court has misinterpreted and misapplied the stipulations of art. 336 of Criminal Code, it has misapplied the legal stipulations referring to the more favourable criminal law in the sense of the Order of the health minister no. 1512/ 2013 and art. 10 of its content referring to the collection of the two biological samples. The Court in Miercurea-Ciuc wrongly detained the situation of the judgment of the second biological sample, as having criminal relevance, in the criminal sentence no. 565/ 5th .03.2014.

The Court in Arad offered a solution of acquittal by the criminal Sentence no. 674/ 27th.02.2014 based on art. 16 para. (1)(b) of Code of Criminal Procedure in the case of a driver found in the traffic without possessing a driving license and tested with the ethyl test device and found the presence of alcoholic impregnation of 0, 80 mg alcoholic vapours/l in the exhaled air. The defendant has been transported in order to collect biological sample and according to the toxicological analysis, he had a blood alcohol content of 0, 75 g/l of pure alcohol in blood at 04: 36, and he had a blood alcohol content of 1,05 g/l of pure alcohol in blood at 05:36.

¹⁴ Idem.

¹⁵ Decision of High Court of Cassation and Justice no. 3/2014.

The Court has motivated in the sense that that the incriminating criminal norm- art. 87 para (1) of G.E.O. no. 195/ 2002- introduces the deed of a person driving on public roads a vehicle and having an alcoholic impregnation of over 0,80 g/l of pure alcohol in blood in scope of criminal unlawful act. From the definition of the legal text, it is strongly underlined the fact that the minimal threshold of blood alcohol content must exceed the value of 0,80 g/l of pure alcohol in blood, the deed does not represent an offence if this value does not exceed. The accomplishment of this blood alcohol content value must be synchronous with the action of driving a vehicle on public roads in the absence of any temporal determinations introduced in the incriminating norm. Therefore, the achievement of the blood alcohol value that attracts the incidence of the criminal law at a subsequent moment of the cessation of the driving action on public roads does not have any relevance as long as it cannot be deduced from this the existence of some similar values to the alcohol blood at the time of driving. For this reason, the methodological rules of collecting biological samples in force at the date of the commitment of the deed stipulated the necessity of accomplishment of this operation within a maximum period of 30 minutes and set up the need of collecting two biological samples. The offender could refuse this operation under the penalty of the impossibility to require the retroactive recalculation of the value of alcohol.

The simple ingestion into the body of a quantity of alcohol, as long as this has not been absorbed and has not been reflected in a blood alcohol level, higher than the value of 0, 80 g/l of pure alcohol, lacks of criminal meaning, given the principle of the strict legality principle of the criminal liability.

By applying these assertions, the overall value in the present case, it is noticed that the defendant presented a value of 0, 75 g/l of pure alcohol in blood at about one hour when stopped in traffic. The second sample resulted at 05:36 has led to a value of 1, 05 g/l of pure alcohol in blood, resulting in the necessity of this incremental chart at the blood alcohol level that the defendant was in the phase of absorption at the first biological sample, as attested by the report of the forensic expertise regarding the retroactive interpretation of the blood alcohol content carried out in question.¹⁶

Compared to those exposed in the criminal Sentence no. 674 of 27th .02.2014 by the Court in Arad, it is mentioned that it treats very well the concern of the retroactive calculation and its importance in the case of the restoration of the objective side of the offence. It clearly shows the moment of performing the offence and the moment

of the level of alcohol in blood with criminal relevance for the purposes of establishing of the present offence. We also mention the situation shown above represents an exceptional case in the field of performing the incriminated offence in GEO no. 195/ 2002 art. 87 para. (1), namely: the situation when the driver who faces metabolically with an alcohol impregnation below the criminal limit at the time of driving, but he/she reaches the level of 0, 80 g/ l of pure alcohol in blood at the moment of sampling the biological samples due to the ascending curve of alcohol caused by the rate of its assimilation.

Through the penal decision no. 230/ A of 20th .03.2014, the Court of Appeal in Cluj- the criminal and juvenile Department rejected the defendant's P.C. application for the trial of the cause in the simplified procedure of the recognition of the accusation and based on art. 396 para. (5) related to art. 16 para. (1)(b) of the Code of criminal procedure with the enforcement of art. 5 of Criminal law, has ordered the acquittal of the defendant from the accusation of committing the offence of driving under the influence of alcohol or other substances prescribed by art. 336 para (1) of Criminal Law (by changing the legal classification of the offence prescribed in art. 87 para (1) of Government Emergency Ordinance no. 195/ 2002) with the enforcement of art. 4 of Criminal Code.

In order to pronounce the sentence, the court found that on 5th. 05. 2012 around 21:30, the defendant drove on public roads, being involved in a road crash, and resulted with slight injury of the called G.B. The defendant had an alcohol impregnation of 0, 70 g/l of pure alcohol in blood at 00: 20, respectively 0, 55 g/l of pure alcohol in blood at 01: 20 as shown in the toxicological analysis from 9th .05. 2012.

A forensic report was also drawn up and established the fact that at the date of 5th .05. 2012, the defendant had a blood alcohol of 1, 15 g/ l at 21:30, report which, in the opinion of the Court of Appeal was considered that it had no longer relevance due to the changes in law to the incriminating text (the defendant being convicted by the penal Sentence no. 107/ 22nd .01.2014 of the Cluj- Napoca Court to 4 months of prison for performing the offence prescribed by art. 87 para. (1) of the Government Emergency Ordinance no. 195/ 2002 with the enforcement of art. 320 para 7 of the Code of criminal procedure, with the conditioned suspension of the penalty execution).

It was considered that according to the art. 336 para (1) of criminal Code, it is an offence to drive on public roads a vehicle by a person who has an alcoholic impregnation of over 0, 80 g/ l at the time of collecting the biological samples.

¹⁶Idem.

In this case, the defendant did not have a blood alcohol content of over 0,80 g/l at that moment, fact that has led to the conclusion that the act committed is no longer prescribed by the criminal law, being discriminated in this respect so that the provisions of art. 4 of Criminal Code¹⁷ are applicable.

The opinion of Prosecutor's Office attached to High Court of Cassation and Justice has been sent through the address 910/C/1276/III-5/2014 on 14th April 2014 within which it also noted the changes of the incriminating conditions as regards the moment at which it is necessary the existence of the alcohol impregnation of the driver to meet the material element of the objective side of the offence against art. 87 of GEO no. 195/2002.

Over this issue, the Prosecutor argues on the conditions of incriminating prescribed in art. 336 para (1) of Criminal Law, as having a double meaning:

It fixes the moment of collecting the biological samples as a unique moment of determining the alcoholic impregnation in blood which is relevant to the retention of the offence prescribed in art. 336 para (1) of Criminal Code;

It involves a single biological samples. Over this issue, the Prosecutor's Office mentions that there is no legal correlation in the view that the methodological norms regarding the collecting, storage and transport of the biological samples in order to judicial probation through the establishment of the blood alcohol content or the presence of substances or narcotic substances or drugs with similar effects in the body in the case of the people involved in events or surroundings regarding the traffic, approved by the Order of the Health Minister no 1512/2013, which in art. 10 para (1) provide that "to establish the blood alcohol two blood samples will be collected at an interval of an hour from each other, each sample being represented by a quantity of 10 ml blood" and according to art. 12 para (1), "in the case that two blood samples were collected, at an interval of one hour from each other, the retroactive estimation cannot be carried out."¹⁸

This retroactive estimation is necessary and useful in fixing the constitutive elements of the offence in the form in which it exists in the previous rules, not finding its application in the form of the incrimination in art. 336 para (1) of Criminal Code.

The Prosecutor's Office also presents the situation of collecting the biological samples that constitute a unique moment situated close to the action of driving on public roads a vehicle which has relevance to the protection of social relations regarding the safety on the public roads and which allows the determination of the blood alcohol impregnation with a high degree of precision making reference to art. 190 para (8) of the Code of criminal

procedure that fixes "in the shortest time" as moment of collecting.

Concluding, the Prosecutor's Office appreciate that the probative value of the second sample, detected at an interval of one hour from the time of the first sample, cannot be considered as having criminal relevance.

By analysing all the aspects of the problem which were subjects to the debates, the High Court of Cassation and Justice decides that "in the hypothesis of a double collection of biological samples, the result of the blood alcohol is the one given by the first sample" on 12th May 2014.

4. The decision of the Constitutional Court of Romania no 732/2014

After this date, the Constitutional Court has decided on the solution of the complaint about the infringement of the constitution of the disposals of art. 336 para (1) and (3) of the Criminal Code. The Court of Justice objected ex officio this complaint in the file no 984/255/P/2012 of the Court of Appeal in Oradea- the criminal Division and for causes involving minor on the occasion of the solution of the made appeal in a criminal case where the defendant was sent to court for performing the offence prescribed by art. 87 para (1) of the Government Emergency Ordinance no. 195/2002 regarding the driving on public roads.

In the motivation of the complaint about the infringement of the constitution, the Court of Appeal in Oradea sustains that the disposals of art. 336 para (1) and (3) infringe the constitutional stipulations of art. 1 para. (5) regarding the obligation of respecting the Constitution, its supremacy and its laws, of the art. 21 para (3) relating to the right of a fair trial, and of art. 73 par. (3) (h) relating to the regulation of the offences, penalties and the regime of these fulfilments by organic law, as well as of the art. 20 regarding the international treaties as regards the human rights on the domestic laws in relation to the stipulations of art. 6 paragraph 1 regarding the legitimacy of the incrimination from the Convention for the protection of the human rights and of fundamental freedoms. Thus, it considers that the legislator, by incrimination of the action of driving a vehicle under the influence of alcohol or other substances as it is regulated this offence by art. 336 of Criminal Code, deviated from the general principle of the legitimacy of the incrimination of art. 7 paragraph 1 of the Convention for the protection of the human rights and fundamental freedoms, according to which "no one can be convicted of any act or omission which does not constitute an offence according to the national and

¹⁷ Decision of the High Court of Cassation and Justice no. 3/2014.

¹⁸ Idem.

international law at the commitment moment”, namely by art. 1 of Criminal Code which in par. (2) prescribes that “No person may be penalized for a deed which was not prescribed by the criminal law at the time it was committed”.¹⁹

The Court of Appeal in Oradea also mentions that the legislator attempted the dissociation between the commitment of offence, which coincides with the detection of the driver in traffic, and the consuming offence, which, in the new legislative vision, would be the collection of the biological samples on the conditions under which this offence is one of danger and therefore is consumed when it occurred. In other words, when stopped in the traffic, the offender no longer presents a danger for the social values protected by the criminal law and it would be absurd to be punished for an act which no longer represents a public danger, reported to the time of collecting the biological sample. Moreover, the new regulation, no longer allows to collect two biological samples in order to establish the level of alcohol at the time of catching in the traffic of the author of the act, abolishes a scientific sample, which is conclusive and useful to the case, the one which consists in the retroactive calculation of the blood alcohol.

In reasoning of its decision, the Constitutional Court of Romania mentions that the art. 336 par. (1) of Criminal Code did not take the same text as art. 87 par. (1) of Criminal Code of Government Emergency Ordinance no. 195/2002, but it amended the incriminating conditions as regards the moment when it is necessary the existence of the blood alcohol impregnation in order to be able to find the meeting of the material element of the objective side of the crime, as it results from the exposure of reasons of the new Criminal Code, by amending the content of the offence of driving a vehicle under the influence of alcohol or other substances, the legislator sought to exclude the possibility of a retroactive estimation of the alcohol level in order to avoid the inconveniences created by this estimation. The legislative solution prescribed by art. 87 para. (1) of the Government Emergency Ordinance no. 195/2002 imposes a retroactive calculation of the blood alcohol level which lies in determining the existent blood alcohol level at the moment of driving and it requires the collection of two blood samples to establish the ethylic intoxication phase (absorption or elimination) and the rate of individual elimination in case of the request of the expertise of retroactive estimation of the blood alcohol.

“The alcohol impregnation of over 0, 80 g/l of pure alcohol in blood present at the time of collection of biological samples places, thus, the consumption of the offence at the later time of its commitment, in the conditions in which the essence of the offences

of danger is the fact that they are consumed at the time of their occurrence. Once with the stopping in traffic, it ceases the state of danger for the social values protected by the provisions of art. 336 of Criminal Code, thus, related to the moment of collecting the biological samples, the calling of the criminal liability to account is not justified. The determination the degree of the alcohol impregnation and, implicitly, the framing in the field of the criminal unlawful depending on the time of the collection of the biological samples, may not always be immediately after the commitment of the deed, represents an external and randomly criterion of the behaviour of the offender in order to criminal responsibility contrary to the constitutional and conventional norms mentioned above.”²⁰

By a majority of votes, on 16th.December. 2014, the Court found that the phrase “at the time of collecting the biological samples” of the content of the provisions of art. 336 para. (1) of Criminal Code is unconstitutional because it prejudices the constitutional provisions of art. 1 para. (5) related to the principle of respecting the laws and of art. 20 regarding the assertion of the international treaties as regards the human rights on domestic laws reported to the provisions of art. 7 paragraph 1 regarding the legitimacy of the incrimination from the Convention for the protection of human rights and fundamental freedoms. The mentioned phrase lacks of predictability the incriminating norm under the circumstances in which the principle of respecting the laws and of the legitimacy of the incrimination require the legislative to enact through texts which are sufficiently clear and precise to be applied, including, through the insurance of the possibility of the concerned people to comply with the legal requirements.²¹

The declaration of the normative phrase “at the time of collecting the biological samples” as being unconstitutional, makes that by returning to the criminal relevance of the moment of driving and that of the sampling as a constitutive element of the objective side, the necessity of the retroactive calculation of the alcohol level should be again necessary. In other words, the Court recalls in the view of the regulation the previous incriminating reasoning through the retroactive calculation of the blood alcohol. The Decision of the Constitutional Court also makes the effects of the Decision of the High Court of Cassation and Justice no. 3/2014 to stop.

¹⁹The Decision of the Constitutional Court of Romania no. 732/2014.

²⁰ Idem.

²¹ Idem.

5. Methodological norms regarding the sampling, storage and transport of the biological samples of 12th December 2013

The successive legislative changes led to the phenomenon of incoherence and, in some cases, to the misapplication of the law due to the problems referring to the enactment and implementation techniques of the needs of the society in the normative document.

As regards the application of the methodological norms referring to the sampling, storage and transport of the biological samples to judicial probation through the determination of the blood alcohol or the presence in the body of substances or narcotic products or drugs with similar effects to these ones in case of the people involved in events or circumstances related to road traffic, it feels the need to make some remarks:

Firstly, once with the entry into force of the New Criminal Code, they acted upon the procedure of collecting the biological samples, the methodological norms referring to the sampling, storage and transport of the biological samples to judicial probation through the determination of the blood alcohol or the presence in the body of substances or narcotic products or drugs with similar effects to these ones in case of the people involved in events or circumstances related to road traffic approved by the Order of the Health Minister no. 1512/2013, published in the Official Gazette of Romania, Part I, no. 812 of 20th December 2013, it feels the need to make some remarks. These norms stipulated that the biological samples which can be sampled from the involved people in events or in circumstances related to road traffic to determine the blood alcohol or the presence in the body of drugs, can be represented by blood samples (in the case of the determination of the blood alcohol) and samples of blood and urine (in the case of the determination the presence of drugs in the body)²². The collection of the biological samples in order to establish the blood alcohol or the presence of the drugs in the body will be made in the shortest possible time since the occurrence of the traffic event or the circumstance which required their sampling.²³

The issue over which it was successively intervened following the Decision no 3/ 2014 the Decision no. 3/ 2014 of the High Court of Cassation and Justice and of Decision 732/ 2014 of the Constitutional Court lied in the number of the biological samples taken by the medical staff to prove the commitment of the offence. Thus, the Order initially obliged to determine the blood alcohol the collection of two blood samples at an interval of one hour from each other, each sample being represented by a 10 ml blood quantity.

After the decision of the High Court of Cassation of Justice, published in the Official Gazette on 28th .05.2014, the methodological norms referring to the sampling, storage and transport of the biological samples to judicial probation through the determination of the blood alcohol or the presence in the body of substances or narcotic products or drugs with similar effects to these ones in case of the people involved in events or circumstances related to road traffic were amended by the Order 1192/2014 on 23rd.10. 2014, establishing that to determine the blood alcohol it is sampled a single blood sample of 10 ml.

In the first instance, the legislative material related to the interpretation of art. 336 of Criminal Code and the collecting of biological samples in the field of forming the probative material in order to act the criminal responsibility of the people who commit the respective offence, found its legislative coherence and enforcement because it was no longer necessary to sample two blood samples to set the occurrence and probation of the offence, since the only evidence with criminal relevance was the sampled evidence, the retroactive calculation did not find its enforcement due to the Decision of the High Court of Cassation and Justice.

Subsequently, the Decision 732/ 2014 of the Constitutional Court of Romania, published in the Official Gazette on 27th.01.2015 that declared the unconstitutionality of the phrase “at the time of collecting the biological samples” meant the returning to the retroactive calculation in order to establish the occurrence of the offence. The problem in practise appeared due to the Order 1192/ 2014 of 23rd.10. 2014 which was still into force and supposed the collection of a single biological sample, the methodological norms referring to the sampling, storage and transport of the biological samples to judicial probation through the determination of the blood alcohol or the presence in the body of substances or narcotic products or drugs with similar effects to these ones in case of the people involved in events or circumstances related to road traffic were again amended by the Order 277/ 2015 of 18th. 03. 2015 that obliged this time the collection of two blood samples at an interval of one hour of each other in order to determine the blood alcohol, and each sample being represented by 10 ml to retroactively calculate and determine the blood alcohol at the time of driving

Thus, we notice that the period between 27th.01.2015 (the time of the publication of the Decision of the Constitutional Court) and 18th.03.2015 (the time of the Order 277/2015) still performed the previous amendments brought over the methodological norms referring to the sampling, storage and transport of the biological samples to

²² Art. 7.

²³ Art. 9.

judicial probation through the determination of the blood alcohol or the presence in the body of substances or narcotic products or drugs with similar effects to these ones in case of the people involved in events or circumstances related to road traffic, thus, the collection of biological samples involved the collection of a single blood sample, even though, it was necessary the retroactive calculation that involved two biological samples, aspect that was impossible to achieve to establish the occurrence of the offence.

The only plausible solutions in accordance with the regulation, pronounced by the prosecutor's office and instances, in the case when the driver was found in traffic between 27th.01.2015 and 18th.03.2015 to whom it was collected only a single biological evidence that was at the limit of 0,80 g/l of pure alcohol, and without existing the result of the alcohol test because he/ she refused this evidence, are the classification of criminal prosecution, respectively the acquittal in the phase of judgement, being incidents art. 16 para. (1)(b), the thesis I of the Code of Criminal Procedure. Of course, there is also a special situation made by the driver who, at the time of the collection of the single biological sample has sufficiently high blood alcohol that, beyond any reasonable doubt results that at the time of driving he/she had an alcohol impregnation in blood which placed in the field of criminal unlawful. To understand better the situation, we will take the example of the driver found in the traffic on 28th.02.2015 at 20:00, to whom it is collected a single biological sample at 21:00 that lying in 10 ml of blood from which it results an alcohol impregnation of 2,2 g/l of pure alcohol. In this case, the solution of conviction of the instance will be legal, as the forensic expertise notes that, under no circumstances, at 20:00 the driver could not have an alcohol impregnation lower of 0,8 g/l.

6. Solution of acquittal of the offender, related to the decision of the Constitutional Court of Romania no. 732/2014

By the criminal verdict no 12 of 4th.06. 2015 pronounced by the Military Court from Iasi, it was prescribed to abstain from the enforcement of the penalty against the defendant F.V., sent to court for the commitment of the offence of "Driving under the influence of the alcohol of other substances" provided by art. 336 para. (1) of the Criminal Code with the enforcement of art. 5 of the Criminal Code. The stipulations prescribed by art. 81 C of the Criminal Code has also been applied to the defendant, drawing the defendant attention to the stipulations of art. 82 para. (3) of Criminal Code

The first instance retained that the defendant F.V. was sent to court for the above mentioned offence through the indictment of the Military

Prosecutor's Office attached to the Military Court from Iasi from 6th.08.2014, given in the file no. 74/P/2014, the deed lying in that the defendant was topped in traffic and tested with the ethyl test, resulting a value of 0,57 mg/l of pure alcohol in the exhaled air.

Two biological samples have been collected to obtain the blood alcohol, resulting the value of 1,25 gr% (of pure alcohol in blood) at 00:40 and 1,10 gr.% (of pure alcohol in blood) at 01:40. The defendant provided two types of alcoholic drinks (different), and two values of blood alcohol were established through the report of expertise at the time of the discovery, respectively 1,35 gr% and 0,50-0,40 gr% depending on the type.

An appeal was declared against the criminal verdict by the Military Prosecutor's Office subordinated to Military Court from Iasi. The reasons of the appeal were strongly related to the effects of the Decision of the Constitutional Court no. 732 of 16th.12.2014, published in the Official Gazette no. 69 of 27th.01.2015 according to which the phrase "at the time of the collection of the biological samples" from the stipulations of art. 336 para. (1) C of the Criminal Code are unconstitutional.

The instance of appeal had in view the fact that at the date of 27th.01.2015, when the decision 732/2014 of the Constitutional Court was published in the Official Gazette, the phrase "at the time of collecting the biological samples" from the content of the stipulations of art. 336 para. (1) C of the Criminal Code was suspended by law in the first stage (45 days) and the judicial effects ceased because the Parliament did not agree with these unconstitutional provisions with the stipulations of the Constitution.

After 27th.01.2015, the date of the publication in the Official Gazette of Decision of the Constitutional Court no. 732/2014 through which it was noticed the unconstitutionality of the phrase "at the time of collecting the biological samples" from the content of art. 336 para. (1) of the Criminal Code and the lack of the legislative intervention according to art. 147 para (1) of the Constitution, the stipulations of art. 336 para. (1) of the Criminal Code do not provide the condition of incrimination as regards the moment when the existence of the alcohol impregnation in blood is necessary to be able to notice the meeting of the material element of the objective side of the offence.

In the absence of this essential condition of the body of law (art. 336 para. (1) of Criminal Code), not only the recipients of the criminal law do not have a clear representation of the constitutive elements of the objective and subjective nature of the offence in such a way to provide the consequences that result from the failure to comply with the standard and to adapt the

behaviour according to it, but the deed prescribed by art. 336 para (1) of Criminal Code- leaves the field of the criminal illicit because the text becomes inapplicable in the lack of the same condition-essential requirements.

The considerations of the decision of the Constitutional Court cannot add to the law because the Constitutional Court is not a positive legislative, and neither the courts have the competence of enactment, the substitution of the of the competent authority in the field (the Decision of the Constitutional Court no. 838/2009), the Parliament having the exclusive competence to regulate the offences, penalties and their execution by organic law.

In conclusion, by the deed prescribed by art. 87 para (1) of G.E.O. no. 195/2002 or the art. 336 para (1) of the Criminal Code when from the commitment of the offence until the final judgement of the case, after the date of the publication of the Decision of the Constitutional Court no. 732 from 16thDecember 2014 in the Official Gazette, respectively 27th.01.2015 – the instance will notice that are incident the stipulations of art. 4 of the Criminal Code regarding the enforcement of the criminal law of discrimination, so that even if the imputed deed exists, this one is not stipulated in art. 16 para. (1) B thesis I of the Criminal Procedure, circumstances which by the enforcement of art. 396 para. (5) of the Criminal Procedure brings the acquittal of the defendant.

Based on art. 396 para (5) related to art. 16 para (1) B thesis I of Criminal Procedure Code , Military Appeal Court acquitted the defendant F.V. for the offence of “ driving a vehicle under the influence of alcohol or other substances” prescribed by art. 336 para. (1) of the Criminal Code.

As compared to the considerations which the Decision no. 84/ 2015 of the Military Court of Appeal bases on, it is appreciated that this has incorrectly interpreted and understood the constitutional stipulations from the content of the art. 147 of the Constitution, it interpreted the passivity of the institution of the Parliament in the sense of the total discrimination of the criminal deed in the content of art. 336 of the Criminal Code.

A criminal deed so serious cannot exist from the scope of the criminal illicit law. Moreover, the law must be interpreted in the spirit for which it has been designed, not just formally.

7. Aspects of compared law

As regards the situation of the blood alcohol content when driving, an important aspect is

represented by the maximum admitted limit of alcohol impregnation in blood under which the driver should adapt for not entering in the scope of the criminal illicit law at the level of the European Union.

The legislation on alcohol consumption in Europe is basically divided into two large regions: Western Europe has an allowed limit of alcohol of 0, 5 per thousands, while many of the members of the former communist bloc have zero legal limits.

There are also nuances and variations from one country to another, and also exceptions for different categories of drivers, thus, for example, the regulations related to the alcohol consumption is applied to the cyclists in Poland.

The following table represents the maximum limit of alcohol allowed in the member states of the European Union, as follows²⁴:

<i>Country</i>	<i>The maximum allowed blood alcohol level g/l (%)</i>
Austria	0.05
Belgium	0.05
Bulgaria	0.05
Cyprus	0.05
Croatia	0.05
Denmark	0.05
Estonia	0
Finland	0.05
France	0.05
Germany	0.05
Greece	0.05
Ireland	0.05
Italia	0.05
Leetonia	0.05
Lithuania	0.04
Luxemburg	0.08
Malta	0.08
Poland	0.02
Portugal	0.05
Great Britain	0.8
Czech Republic	0
Romania	0
Slovakia	0
Slovenia	0.05
Spain	0.05
Sweden	0.02
Holland	0.05
Hungary	0

A different aspect compared to the situation from Romania is represented by the fact that in countries such as Austria or Leetonia, the level of the blood alcohol with unlawful relevance is

²⁴ http://www.drinkdriving.org/worldwide_drink_driving_limits.php#bac_limits

reported to the experience of the driver or the type of the driven vehicle, thus, if in Austria the legal limit is 0,05 for the drivers who obtained the driving license less than two years or for those who drive cars bigger than 7,5 tones, the limit is of 0,01. In Leetonia, the maximum allowed limit is of 0,02 for the drivers who have an experience of less than two years. A concentration of 0.12 draws the increase in the limits of penalty, thus, the penalty may reach at two years in prison.

In France, the maximum allowed limit of the blood alcohol level is of 0.02 per thousand for the drivers who drive vehicles intended for public transport, exceeding this limit draws the sanction represented by the fine penalty and the suspension of the right of driving for a period of maximum 3 years. A concentration of 0,8 per thousand draws the suspension of the right of driving for a period of 3 years, the penalty of fine of up to 4.500 euros and the imprisonment penalty of up to 2 years.

In Germany, the limit is of 0.03 for the driver under 21 years, for the professionals and for those who have less than 2 years of experience on road. Also, the detection in traffic of the drivers with blood alcohol content higher than the allowed limit draws and further promotes a psychological examination to regain the right to drive.

It is also mentioned that in Italy, the drivers caught in traffic with blood alcohol content exceeding 0.15 will be penalized with the confiscation of the vehicle.

8. Conclusions

The alcohol, swallowed in the body in big quantities and in a relatively short time, causes temporary sensory loss, producing a series of pathological phenomena, such as: mental confusion, lack of coordination, visual, auditory, sensory confusion, etc.

The studies carried out by experts have demonstrated that the alcohol, even consumed in small amounts, reduces significantly the power of discretion, the capacity of concentration and the attention of drivers, affects their reflexes, the time of reaction, etc. and the number of errors when driving and of the infringements of laws increases in direct proportion report to the amount of swallowed alcohol. It was found under the later aspect that the people under the influence of alcohol drive with higher speeds in relation to concrete conditions of circulation, fail to enter properly with the vehicles in curves, pass more frequently on the opposite side, are no longer able to appreciate the

distances and are too much close to vehicles in front of them, they engage in risky overtaking, etc.

The offence of driving a vehicle under the influence of alcohol or other substances is an offence with I higher level of social danger, and following the whole normative changes and the intervention of the state we consider that there is no problem in interpreting the stipulations of art. 336 of Criminal Code.

As it was lately shown, the judicial practice has not been uniform in the enforcement of the stipulations of art. 336, the decisions of the courts of Romania provide solution totally different in similar situations.

Of course, it is admitted that, in the past, due to the Decision of the High Court of Cassation and Justice no. 3/2104, of the deficient content of art. 336 and of the methodological norms regarding the sampling, storage and transport of the biological samples, there were problems of law in practice which resulted in uneven practice and legal issues relating to the interpretation of the provisions regarding the drivers of vehicles who are in exercising the right to drive who have in blood an alcohol impregnation higher than 0.80 g/l.

Once with the entry into force of the new Criminal Code, the Romanian system of law has known a comprehensive reform, and as regards the highway legislation, the offences such as those from the field of the Government Emergency Ordinance no. 195/2002 relating to the circulation on the public roads were abolished and introduced in the content of the Criminal Code under the influence of some normative changes. This reform was, in most of cases, welcomed by great authors and theorist, as any new aspect, was subject to some critics that in some cases have surpassed the beneficial side of the new regulations.

It is considered that the intervention of the Constitutional Court relating to standardisation of the interpretation and practice in the field of the analysed offence has been a positive thing that does not leave place for the interpretations of any nature, although there were situations where, for example the Court of Appeal from Ploiesti notified the High Court of Cassation and Justice requiring a pronouncing on a prior decision through which it is given a resolution of principle to the question of law on which the Constitutional Court ruled. In other words, the Court of Appeal from Ploiesti notified the High Court of Cassation and Justice relating to the pronouncement of a prior decision to offer a solution on the interpretation of the decision of the Constitutional Court.

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